

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION  
CASE NO.: 1:20-cv-04874-SCJ**

MORGAN HOWARTH,

Plaintiff,

v.

HERO BUILD SOLUTIONS LLC,

Defendant.

**PLAINTIFF’S MOTION PURSUANT TO RULE 60(A) TO CORRECT  
DEFAULT JUDGMENT**

On August 31, 2021, plaintiff Morgan Howarth, by and through his undersigned counsel, filed his Motion for Entry of Final Default Judgment Against Defendant Hero Build Solutions, LLC (“HBS”). (ECF No. 13) Plaintiff’s motion sought a default judgment based on statutory damages for copyright infringement in the amount of \$301,536.00, attorney’s fees and costs in the amount of \$3,892.39, and a permanent injunction. *Id.* In support of the damage amount claimed, Plaintiff explained that his actual damages were \$100,512.00, and therefore a higher statutory damage award was justified.

On January 6, 2022, the Court entered its Order on Plaintiff's motion at (ECF No. 14) The Court's Order awarded Plaintiff \$100,512.00 in actual damages **and** \$301,536.00 in statutory damages, as well as \$3,435.00 in attorney's fees and costs. On January 6, 2022, the Clerk entered judgement against the defendant for \$100,512.00 in actual damages and \$301,536.00 in statutory damages, and \$3,435.00 in attorney's fees and costs. (ECF No. 15) The entry of judgment for **both** actual and statutory damages was a mistake.

A plaintiff in an infringement action may opt for either actual or statutory damages, **but not both**. 17 U.S.C. § 504(a). The Court's judgment for both actual and statutory damages should be corrected pursuant to Fed. R. Civ. P. Rule 60(a), which authorizes the Court to correct a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.

Accordingly, Plaintiff respectfully requests the Court amend the judgment entered at (ECF No. 15) pursuant to Fed. R. Civ. P. Rule 60(a) to delete the actual damage award, and award only \$301,536.00 in statutory damages, \$3,892.39 in attorneys' fees and costs, and the preliminary injunction.

Dated: March 31, 2022

Respectfully submitted,

/s/ Joel B. Rothman

JOEL B. ROTHMAN

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